MULTISTATE TAX COMMISSION

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Minutes
Income & Franchise Tax Uniformity Subcommittee Meeting
April 26, 2011 3:30 p.m. EST
Via Teleconference

I. Welcome and Introductions

The Chair of the Income and Franchise Tax Uniformity Subcommittee called the meeting to order at 1:30 P.M. EST. The following persons attended the meeting by telephone.

Name	Affiliation	Name	Affiliation
Robynn Wilson	AK DOR	Louie Gomez	NM DOR
Rebecca Abbo	New Mexico DOR	Private Sector	
Ben Miller	California FTB		
Andrew Glancy	West Virginia DOR	Todd Lard	COST
Paul Skinner	Utah Tax Comm.	Karen Nakamura	PWC
Randy Tilley	Idaho Tax Comm.	Dan Schibley	CCH
Steve Winn		Amy Hamilton	State Tax Notes
Michael Fatale	Massachusetts DOR	Diann Smith	Sutherland
Brenda Gilmer	Montana DOR		
Lilly Crane	Wisconsin DOR	MTC Staff	
Gary Humphrey	OR DOR	Shirley Sicilian	
Janielle Lipscomb		Bruce Fort	

II. Public Comment Period.

No public comments were offered.

III. Review of Model Compact Article IV.1(g) Amendments.

Chair Robynn Wilson asked MTC General Counsel Shirley Sicilian to summarize her memorandum dated April 14, 2011. Ms. Sicilian walked the subcommittee through the draft model definition of sales attached to the memo. The draft is intended to reflect the subcommittee's preliminary policy choices made during its March meeting to adopt, as a general rule, the narrow approach laid out in the policy question list. "Sales" includes receipts from the taxpayer's sales, lease, license, of its product to its customer. Receipts from the sale, lease, or license of tangible production assets such as a factory or plant, office building, or manufacturing equipment are excluded. Receipts from sale, lease, or license of intangible production assets, such as patents, copyrights, good will, working capital, treasury function related investment assets are excluded or limited, unless the taxpayer is engaged primarily in this type of business.

In March, the subcommittee had also requested a list of receipts that it could consider as possible additions to or subtractions from the narrow rule – e.g., receipts from the sale of tangible or intangible production assets. That list is provided in attachment D to the April 14 memorandum.

The Chair asked for any general comments on the basic structure of the current model and the checklist. Hearing none, the Chair asked for comments on particulars of the model draft.

In response to an inquiry, Ms. Sicilian explained the purpose of including receipts from contracts and government licenses in 1(g)(2)(A) was to be consistent with draft section 17, which sources receipts from those transactions. Mr. Miller of California FTB asked the subcommittee to consider whether items meeting the functional test alone should be entirely excluded from the definition of sales. Ms. Wilson asked why receipts from transactions involving this specific type of production asset should be included if receipts from transactions involving tangible production assets are excluded. Ms. Sicilian explained that, unlike tangible production assets, intangible production assets are not represented in the property factor. So a policy question is whether to reflect intangible asset sales in the sales factor, where possible. Most intangible production assets would be hard to source, but intangible contract rights and government licenses associated with a specific geographic area can be reasonably sourced and thus could be included in receipts. Mr. Miller asked the subcommittee to consider if paragraph 1(g)(2)(A) should be retained.

Ms. Gilmer of Montana questioned whether the reference to contractual licenses in specific areas would limit its application in worldwide licensing contexts. Michael Fatale said that although there is no domestic limitation, the language was not intended to apply to all franchising-type receipts.

The subcommittee then changed the discussion to Attachment D, the policy checklist. The Chairs asked for an explanation of why "byproducts" would receive particular attention. Mr. Miller replied that in some transactions involving financial instruments or other intangibles, "by-products" might include inappropriate forms of receipts derived as a by-product of functional transactions. Ms. Sicilian added that the drafting group was also raising a more general policy question of whether receipts from the sale of byproducts should be included in sales, even if they don't meet the transactional test, based simply on their close association with the main product. Alternatively, the receipts from byproducts would be included only if they themselves meet the transactional test. The subcommittee chose the latter approach.

The subcommittee then went through other items on the list. Committee comments included a suggestion for a definition of "customer", a discussion of whether any transactions involving disposition of "functional assets" should be included in the sales definition. Several subcommittee members expressed that none of the transactions involving production assets, business divisions, or businesses, listed as possible additions (no's 1-4) should be added to the narrow sales factor unless those transactions also meet the functional test. The subcommittee then discussed whether transactions listed as possible subtractions (no's 5 and 6) should be excluded from the narrow definition. Possible subtractions included treasury function receipts that might otherwise meet the transactional test of the narrow definition, and other items currently excluded by MTC regs, which also limit sales to the transactional test. After a short discussion, the Chair voiced the sense of the committee that these be excluded or limited to net, unless they represent the taxpayers main business and meet the transactional test.

Ms. Sicilian said the drafting group would now redraft the model statute to reflect the subcommittee's decisions and draft an example of a regulatory definition of customer. The Chair asked if there were any public comments on the discussion to that point. There were none.

IV. Adjournment

The meeting was adjourned at 4:40 p.m. following a motion and voice vote on the same.